THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.8009 OF 2005

DISPOSED OF ON 19-12-2005.

BETWEEN:

S.R.M.RAMA NARAYANA RAJU AND OTHERS. PETITIONERS

AND

LAND ACQUISITION OFFICER,

RAJAHMUNDRY AND OTHERS … RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.8009 OF 2005

O R D E R :

1. This Writ Petition has been filed by the petitioners who are seven in number with a prayer to issue a Writ of mandamus directing the respondents not to enforce notification u/s 4 of L.A.Act in Memo.Ref.No.G.5/5946/04, dated 17.9.2004 of the District Collector, E.G. and consequential notification, if any, and to declare all consequential proceedings under the provisions of Land Acquisition Act as illegal and void in respect of the lands bearing Survey Nos.313, 456, 466, 301, 302/2, 404/2, 403/1B, 403/2B and 468/2B of Kalavacherla village of Rajanagarm Mandal, E.G. District.

2. The case of the petitioners as set out in the writ affidavit, in brief, is :

The petitioners are owners and possessors of the lands in Kalavacherla village of Rajanagaram Mandal, E.G. District as mentioned hereunder:

S.NO.	NAME OF THEPETITIONER	SURVEY NO.	TOTAL HOLDING OFPETITIONER	AREA AFFECTED UNDER ACQUISITION
			ACS-CTS	ACS-CTS
1.	S.R.M.Rama NarayanaRaju	313	5-74	1-84
2.	S.R.M.V.PrabhakaraVarma	456	2-47	2-47
3.	S.R.M.V.Krishnam Raju	313	3-59	1-12
4.	N.S.V.B.Raju	466	2-05	0-19
5.	M/s.Sri ChintalammaHorticulture and Agrl.Firm rep by its M.P.	301302/2	7-669-18	2-951-58
6.	Motaparthi VenkataKrishna Prasad	404/2	7-15	3-40
7.	Smt.Korpu Ramasita	403/1B403/2B	7-00	0-213-74

They dug bore wells to irrigate the lands and raised palm oil, coconut and sweet orange gardens and fibre and tea plantations therein. The Government of Andhra Pradesh conceived lift irrigation scheme under the name and style of Pushkara Lift Irrigation Scheme (PLIS). But the Government without completing the necessary formalities as per the provisions of the L.A.Act is trying to proceed with the scheme. The petitioners came to know about the proposed acquisition of lands of Kalavacherla village for PLIS in the first week of January 2005. Thereupon they submitted representations dated 7-1-2005, 6-1-2005, 8-1-2005 and 18-1-2005 to the Special Deputy Collector, LAO, Changalanadu Lift Irrigation Scheme, Rajahmundry under the impression that he was the LAO as he happened to be the LAO for several schemes. The petitioners were informed by the Special Deputy Collector, LAO, Changalanadu Lift Irrigation Scheme, Rajahmundry that their representations were being forwarded to the Revenue Divisional Officer and LAO for PLIS for taking necessary action. Inspite of repeated requests by the petitioners, there was no response from the RDO, Rajahmundry and LAO, PLIS-1st respondent. The petitioners, inspite of their best efforts could not know in which papers having vide circulation in the local area notifications under section 4(1) and draft declarations were published. The lands proposed to be acquired are situated in E.G.District whereas the authorities have resorted to paper publication of draft declaration in Vijayawada edition. The petitioners secured paper publication dated 23.9.2004 of Praja Sakti wherein 3rd respondent published the draft notification dt.17.9.2004. They verified Praja Sakti dt.23.9.2004 and 26.9.2004 circulated in East Godavari and found that it contained neither draft notification nor draft declaration. Even the draft notification published in Vijayawada edition of Praja Sakti had not shown the ownership particulars correctly. The government has neither paid compensation nor taken possession of the lands since the date of publication of draft notification.

3. Respondents 1 and 3 filed counter affidavit. One.Y.Narasimha Rao has sworn to the counter affidavit. It is stated in the counter affidavit that the Government of Andhra Pradesh has issued orders for construction of Major Irrigation Project viz. PLIS. The scheme is intended to provide irrigation facilities to Ac.1,85,906 during kharif season covering 139 villages of 14 Mandals of E.G. District. Administrative sanctioned for Rs.297.25 crores was accorded by the Government. The Collector, E.G. District, Kakinada approved the draft notification on 17.9.2004 and the same

was published in A.P. Extra Ordinary issue No.211/2004, dated 17.9.2004. The substance of the draft declaration was published in the newspapers viz., Praja Sakti dated 23.9.2004 and Pledge dated 24.9.2004. Enquiry u/s 5A of L.A.Act was dispensed with by invoking urgency clause under Sec.17(4) of L.A.Act. The draft declaration was approved by the Collector, Kakinada on 20.9.2004 and the same was published in A.P. Gazette Extraordinary issue No.213/2004, dated 20-9-2004. The substance of the declaration was published in two daily newspapers i.e. Pledge dated 27.9.2004 and Prajasakti dated 26.9.2004. The same was also published in the locality on 28.9.2004. Notices u/s 9(1) and 10 of the L.A.Act were also issued on 28.9.2004 and published in the required places calling for objections, if any, by 16.10.2004. None has appeared before the LAO. As the farmers wanted clarification on compensation, it was clarified that the bore wells cannot be assessed separately as per the judgment of the Supreme Court vide UNION OF INDIA V. MANGATU RAM. Accordingly proceedings were issued vide reference No.A/1360/2004, dated 3.12.2004 for payment of 80 % value. The lands were taken possession on 9.12.2004. Several meetings with the farmers were held at the village and at sub-collector's office, Rajahmundry to arrive at a price that can be fixed for all the losses sustained by the land losers. The farmers agreed to settle their claims under negotiations and allowed the machines for excavation of canal in their fields in April, 2005. As the writ petitioners refused to receive 80 % of the land value, the same was deposited under revenue deposits vide challan No.685, dated 8.4.2005. It is specifically asserted in the counter affidavit that draft notification and draft declarations were published in three modes i.e. publication in A.P. Gazette, paper publication and local publication. Para 7 and 8 of the counter needs to be noted and they are as under:

> " 7. In reply to the averments made in para 6 of the petitioners affidavit it is submitted that the contention of the petitioners that they could not locate the papers in which draft notification and draft declaration were published. As a matter o fact the substance of the draft notification was published in the newspapers i.e. Prajasakthi on 23.9.2004 in Telugu and the Pledge on 24.9.2004 in English and also published in the locality on 28.9.2004. The substance of the draft declaration was published in the newspapers i.e. Porajasakthi in Telugu on 26.9.2004 and in Pledge in English on 27.9.2004. the same was also published in the locality on 28.9.2004. Notices under section 9(1) and 10, 9(3) and 10 were also issued on 28.9.2004 and published in the required places for calling objections, if any, by 16.10.2004 within the stipulated time. No body was appeared for award enquiry on

16.10.2004 before the LAO.

8. In reply to the averments made in para 7 of the petitioners affidavit it is submitted that the petitioners have filed representations before the LAO (RDO) and the LAO has given reply to the petitioners for the representations by 10.1.2005 in L.Dis.A2/5/2005, dated 10-1-2005. The Gram Sabha was conducted on 4.2.2005 by the LAO along with the Irrigation Engineers to dispel all the doubts of the farmers on the PLIS project and also to seek their cooperation to excavate the canals in a peaceful atmosphere with full assurance to the farmers that the compensation can be arrived at by negotiations under A.P. Land Acquisition Negotiations Rules. The Draft notification and draft declaration was published as required under L.A.Act has already mentioned above. It is further submitted that the Prajasakthi paper has published the notification at page 5 along with so many news item at pages 5 and 6. Copy of the said publication is herewith filed for kind perusal of this Hon'ble Court. The substance of the draft notification was also published in the locality on 28.9.2004."

The respondents placed on record a xerox copy of the challen as proof of their depositing the 80% of the compensation amount.

4. A reply affidavit has been filed by the petitioners. The petitioners denied of their being served the notices u/ss 9(1) and 10 of L.A.Act on them. They also took the plea that Pledge and Prajasakthi have no vide circulation in E.G. District where the lands sought to be acquired are situated. Para 20 of the reply affidavit needs to be noted and it is thus:

" 20. The various answers given to paras (a) to (h) in para 13 of our affidavit to the writ petition are not true or tenable. Our grievance is that an opportunity was not given for us to submit our objections for acquisition and section 5-A enquiry was erroneously dispensed with by playing fraud and even section 4(1) notification was kept under secret and the alleged award enquiry was made without our knowledge and consent. We humbly submit that in view of the laches on the part of the authorities in not following the mandatory provisions of Land Acquisition Act, the proceedings are vitiated and therefore, section 5-a enquiry should be conducted and an opportunity has to be given for us. The various contentions in para 14 of the counter affidavit is not the answer to our contentions and that section 5-a enquiry should be conducted in view of the lapses on the part of the authorities for non-payment of compensation as per section 17(5) of the Land Acquisition Act."

5. Heard learned counsel appearing for the petitioners, learned Government Pleader for Land Acquisition appearing for respondents 1 and 3 and learned counsel appearing for respondent No.2.

6. The principal contention of learned counsel appearing for the petitioners is that the paper publications of draft notification and draft declaration have not been made in the local area where lands sought to be acquired are situated and thus Sec.4(1) notification and Sec.6 declaration are required to be declared as null and void. He further submits that the circumstances of the case do not warrant dispensing with the enquiry u/s 5A of L.A. Act and thus an opportunity is required to be given to the petitioners to file their objections for the proposed acquisition of their lands. In support of his submissions, he refers the paper publication in Prajasakti dated 23.9.2004 and 26.9.2004 and placed reliance on the decision of this court in O.BALAJOJAMMA v. GOVT. OF A.P., DEVIREDDY VENKATASUBBA REDDY v. DISTRICT COLLECTOR, NELLORE and the decision of Karnataka High Court in K.M.RAMALINGAIAH SETTY V. STATE.

7. Learned Government Pleader for Land Acquisition appearing for respondents 1 and 3 submits that the scheme came to be questioned in W.P.Nos.3424 and 3563 of 2004 and both the writ petitions ended in dismissal and thus the contention of the petitioners that there is no proper paper publication has no substance. He also submits that Sec.4 (1) notification and Sec.6 declaration have been notified in three modes i.e. publication in A.P. Gazette, local publication and paper publication and therefore the writ petition is liable to be dismissed. In support of his submissions, reliance has been placed on the paper publications of Sec.4 (1) notification and Sec.6 declaration affected in Prajasakti and Pledge. He also placed the entire file relating to the acquisition of the lands in question. A perusal of the file indicates that the notification of the proposed acquisition of lands have been affected through all the three modes. Page 37 of the file contains land delivery receipt, which indicates that the possession of the land has been handed over to the Government and that the extent of the land is Ac.85-30 cents.

8. The principal contention urged in the writ petition is that the publication in the paper having vide circulation in the local area where lands proposed to be acquired are situated has not been affected and thus Sec.4(1) notification and Sec.6 declaration are liable to be declared as null and void. Much argument has been advanced by learned counsel appearing for the petitioners that the publication of notification in Prajasakti of Vijayawada edition has no relevance.

9. The learned Government Pleader for Land Acquisition appearing for respondents 1 and 3 placed on record the entire file relating to the acquisition of the lands in question. A perusal of the file indicates that the notifications under Sec.4(1) of the L.A.act and declaration under section 6 of the L.A.Act of the proposed acquisition of lands have been taken out through all the three modes. Page 37 of the file contains land delivery receipt, which indicates that the possession of the land has been handed over to the Government and that the extent of the land is Ac.85-30 cents. The learned Government Pleader for Land Acquisition appearing for the respondents 1 and 3 has also placed on record the paper publication affected in Prajasakti dated 23.6.2004 and 26.9.2004. The daily newspaper Prajasakti is being published from Vijayawada, Hyderabad, Visakha, Tirupathi, Khammam and Kurnool. The paper publication placed on record by the learned Government Pleader for Land Acquisition appearing for respondents 1 and 3 contains Sec.4 (1) notification as well as Sec.6 declaration. The learned counsel appearing for the petitioner also placed on record the paper publications dated 23.9.2004 and 26.9.2004 of Prajasakti. By placing reliance on the papers, he would contend that Sec.4 (1) notification and Sec.6 declaration are not published in Prajasakti. I do not see any merit in his contention since Prajasakti has publication at Vijayawada, Hyderabad, Visakha, Tirupathi, Khammam and Kurnool. The copies of the paper publications placed on record by learned Government Pleader for Land Acquisition appearing for respondents 1 and 3 contains notification as well as declaration. It can be said without any controversy that Prajhasakti dated 23.9.2004 and 26.9.2004 published from Visakha contain Sec.4(1) notification and Sec.6 declaration respectively . Therefore, it cannot be said that there is no proper paper publication of Sec.4(1) notification and Sec.6 declaration. The file also indicates that except the petitioner all other land losers have accepted the compensation as a package deal

under negotiations. The purpose of acquisition of the lands is for Pushkaram Lift Irrigation Main Canal. Its object is to provide irrigation to 450 acres of Kalavacherla village. It can be said without any controversy the purpose of acquisition is public purpose. The Supreme Court held in PRATIBHJA NEEMA AND OTHERS V. STATE OF M.P. AND OTHERS that it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the Court. That apart, the scheme came to be questioned in earlier two writ petitions namely W.P.Nos.3424 and 3563 of 2004 which ended in dismissal. That itself indicates that notifications under Sec.4(1) and draft declaration under Sec.6 of L.A.Act have been affected in the papers having wide circulation in the locality where the lands in question are situated.

10. In that view of the matter, I do not see any merit in the contention of learned counsel appearing for the petitioners that there is no proper publication of the lands proposed to be acquired under the said scheme.

11. In the result, this Writ Petition is devoid of merits and the same is dismissed. No costs.

Dated: 19-12-2005. (B.Seshasayana Reddy,J)

tnb

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.8009 OF 2005

DISPOSED OF ON 19-12-2005.